

1 BRETT A. SHUMATE  
Assistant Attorney General  
2 YAAKOV M. ROTH  
Principal Deputy Assistant Attorney General  
3 Civil Division  
4 WILLIAM H. WEILAND  
Acting Assistant Director  
5 ANNA DICHTER  
Senior Litigation Counsel  
6 ERIC SNYDERMAN  
7 LAUREN BRYANT  
CATHERINE ROSS  
8 AMANDA B. SAYLOR  
JEFFREY M. HARTMAN  
9 DANIEL CAPPELLETTI  
SHELBY WADE  
10 Trial Attorneys  
11 U.S. Department of Justice, Civil Division  
Office of Immigration Litigation  
12 General Litigation and Appeals Section  
P.O. Box 868, Ben Franklin Station  
13 Washington, DC 20044

14 Attorneys for Defendants

15 UNITED STATES DISTRICT COURT  
16  
17 NORTHERN DISTRICT OF CALIFORNIA  
18  
19 SAN FRANCISCO DIVISION

19 NATIONAL TPS ALLIANCE, *et al.*,

20 Plaintiffs,

21 v.

22 KRISTI NOEM, in her official capacity as  
23 Secretary of Homeland Security, *et al.*,

24 Defendants.  
25  
26  
27  
28

Case No. 3:25-cv-1766-EMC

**DEFENDANTS' SUPPLEMENTAL BRIEF IN  
SUPPORT OF A TEMPORARY STAY**

Judge: Hon. Edward M. Chen

1 This Court should temporarily stay adjudication of Defendants’ motion to dismiss, the parties’  
 2 motions for summary judgment, and Plaintiffs’ motion to consider extra-record evidence pending the  
 3 Ninth Circuit’s decision in *Nat’l TPS All., et al., v. Noem, et al.*, No. 25-2120 (9th Cir.) and, if sought, the  
 4 disposition of any certiorari petition. ECF No. 269; *see* ECF No. 115 (Defendants’ administrative stay  
 5 motion). However, if the Court proceeds to final judgment and enters judgment against Defendants, the  
 6 Court should stay any final judgment against Defendants and any further proceedings or discovery  
 7 pending appeal or, at minimum, for at least 14 days to afford Defendants an opportunity to seek a stay in  
 8 an orderly manner from the Ninth Circuit.

9 On March 31, 2025, this Court postponed the effective date of Secretary Noem’s 2025 Vacatur  
 10 and Termination of TPS for Venezuela.<sup>1</sup> ECF No. 93. On April 1, 2025, Defendants appealed that order  
 11 to the Ninth Circuit, ECF No. 94, and obtained a stay pending disposition of any petition for certiorari  
 12 from the Supreme Court. *Noem v. Nat’l TPS All.*, No. 24A1059, 2025 WL 1427560 (S. Ct. May 19, 2025).  
 13 The Ninth Circuit appeal—which was argued on July 16 following extensive briefing—implicates this  
 14 Court’s jurisdiction to review TPS determinations under the Administrative Procedure Act (APA), the  
 15 merits of Plaintiffs’ equal protection arguments, equitable limitations on universal stays, and the  
 16 applicability of 8 U.S.C. § 1252(f)(1) to the TPS statute. *See* ACMS Nos. 22, 48, 73, *Nat’l TPS All., et al.,*  
 17 *v. Noem, et al.*, No. 25-2120 (9th Cir.). Because the resolution of those issues will directly affect the  
 18 Court’s resolution of the parties’ dispositive motions and Plaintiffs’ motion to consider extra-record  
 19 evidence, and entry of final judgment would moot a pending appeal to which the parties and the Ninth  
 20 Circuit have devoted substantial resources, the Court should stay adjudication because doing so will  
 21 promote the fair and efficient resolution of the issues presented.

22 “The District Court has broad discretion to stay proceedings as an incident to its power to control  
 23 its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). That includes entering an administrative stay  
 24 if “it is efficient for its own docket and the fairest course for the parties . . . pending resolution of  
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26 <sup>1</sup> *Vacatur of 2025 [TPS] Decision for Venezuela*, 90 Fed. Reg. 8,805 (Feb. 3, 2025) (“2025 Vacatur”);  
 27 *Termination of the October 3, 2023 Designation of Venezuela for [TPS]*, 90 Fed. Reg. 9,040 (Feb. 5, 2025)  
 (“2025 Termination”).

1 independent proceedings which bear upon the case.” *In re PG&E Corp. Sec. Lit.*, 100 F.4th 1076, 1085  
2 (9th Cir. 2024). The Ninth Circuit has identified three non-exclusive factors to consider in deciding  
3 whether to issue a stay: “(1) the possible damage which may result from the granting of a stay; (2) the  
4 hardship or inequity which a party may suffer in being required to go forward; and (3) the orderly course  
5 of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law.”  
6 *Id.* (cleaned up). All three factors weigh in favor of a stay of district court proceedings in this case pending  
7 resolution of Defendants’ Ninth Circuit appeal.

8 First, a stay will serve “the orderly course of justice” by “simplifying” or resolving central (and  
9 potentially dispositive issues) in this litigation. *Id.* This Court concluded that it had jurisdiction to review  
10 the Secretary’s 2025 Vacatur and Termination determinations under the APA notwithstanding the  
11 jurisdictional bar at 8 U.S.C. § 1254a(b)(5)(A). ECF No. 93 at 15-30. That threshold—and, as Defendants  
12 argue, dispositive—jurisdictional issue is squarely before the Ninth Circuit. Further, the Ninth Circuit’s  
13 decision on Plaintiffs’ equal protection claim will almost certainly address whether consideration of extra-  
14 record evidence is warranted or, conversely, would amount to an abuse of discretion. *See Lands Council*  
15 *v. Powell*, 395 F.3d 1019, 1029-30 (9th Cir. 2005). Any legal questions it resolves will bind this Court.  
16 *See Ranchers Cattlemen Action Legal Fund v. U.S. Dep’t of Agric.*, 499 F.3d 1108, 1114 (9th Cir. 2007)  
17 (“A fully considered appellate ruling on an issue of law made on a preliminary injunction appeal . . .  
18 become[s] the law of the case for further proceedings in the trial court on remand and in any subsequent  
19 appeal.”) (quoting 18 Wright & Miller, Federal Practice & Procedure § 4478.5 (2002)). Even if the Ninth  
20 Circuit rejects Defendants’ jurisdictional arguments, its decision will still materially affect the Court’s  
21 resolution of this case. *See In re PG&E Corp. Sec. Lit.*, 100 F.4th at 1085 (“A district court may, with  
22 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an  
23 action before it, pending resolution of independent proceedings which bear upon the case.”) (cleaned up).  
24 In short, because the Ninth Circuit “must address issues identical to those presented in this action” this  
25 Court “could receive considerable assistance in resolving this action” and a stay is warranted as a matter  
26 of judicial efficiency. *Id.* at 1086 (cleaned up).

1 A stay of the adjudication of the pending dispositive motions and the motion to consider extra-  
2 record evidence until the Ninth Circuit decides the already-argued appeal would also serve “the orderly  
3 course of justice” by preserving judicial resources and the litigation resources of both parties. *Id.* at 1085.  
4 The parties have already fully briefed and argued the appeal, and the Ninth Circuit has devoted substantial  
5 resources to it. A decision entering final judgment would moot the preliminary-relief appeal the Ninth  
6 Circuit is considering, wasting the resources already spent on the appeal. *Planned Parenthood v. Arizona*,  
7 718 F.2d 938, 949 (9th Cir. 1983); *SEC v. Mount Vernon Mem’l Park*, 664 F.2d 1358, 1361 (9th Cir.  
8 1982). By contrast, the time the parties and the Court have already spent on the currently pending motions  
9 will not be wasted regardless of how the Ninth Circuit rules. Win or lose, deciding the case before the  
10 Ninth Circuit rules will waste the parties and the courts’ resources, but waiting to receive the Ninth  
11 Circuit’s decision will not.

12 Second, a temporary stay of adjudication of these motions would not adversely affect either party’s  
13 interests. This Court already permitted Plaintiffs to conduct extra-record discovery, ECF No. 93 at 77, so  
14 staying a decision on that motion will not adversely affect Plaintiffs’ interests. Nor will delaying entry of  
15 final judgment. The present status quo is the one determined by the Supreme Court to be proper. *Noem v.*  
16 *Nat’l TPS All.*, No. 24A1059, 2025 WL 1427560 (S. Ct. May 19, 2025).

17 Plaintiffs’ interests will not be adversely affected by a delay in a decision on the dispositive  
18 motions, either, because a stay of any judgment in Plaintiffs’ favor would continue to be appropriate in  
19 light of the Supreme Court’s stay reflecting its view of the appropriate status quo during litigation. A stay  
20 of any final judgment against the Government would avoid unnecessary procedural complications and  
21 ensure consistency with the Supreme Court’s directive. At minimum, should this Court proceed to final  
22 judgment and rule in Plaintiffs’ favor, Defendants request at least a 14-day delay of final judgment so that  
23 Defendants may seek a stay in an orderly manner from the Ninth Circuit. Again, the appropriate continuing  
24 status quo emphasizes that the proper course is to wait to decide the motions until after the Ninth Circuit  
25 has decided the fully briefed and argued pending appeal.

1 Dated: August 7, 2025

Respectfully submitted,

2 BRETT A. SHUMATE  
3 Assistant Attorney General

4 YAAKOV M. ROTH  
5 Principal Deputy Assistant Attorney General  
6 Civil Division

7 WILLIAM H. WEILAND (Mass. Bar 661433)  
8 Acting Assistant Director

9 ANNA DICHTER (NJ Bar 304442019)  
10 Senior Litigation Counsels

11 ERIC SNYDERMAN (VA Bar 99563)  
12 LAUREN BRYANT (NY Bar 5321880)  
13 AMANDA SAYLOR (FL Bar 1031480)  
14 CATHERINE ROSS (DC Bar 9007404)  
15 Trial Attorneys

16 /s/ Jeffrey Hartman  
17 JEFFREY HARTMAN  
18 Trial Attorney (WSBA 49810)  
19 U.S. Department of Justice, Civil Division  
20 Office of Immigration Litigation  
21 General Litigation and Appeals Section  
22 P.O. Box 868, Ben Franklin Station  
23 Washington, DC 20044  
24 Tel: (202) 532-4404  
25 Jeffrey.M.Hartman@usdoj.gov

26 *Attorneys for the Defendants*